

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2017

CORAM :

The Hon'ble MR.JUSTICE RAJIV SHAKDHER

AND

The Hon'ble MR.JUSTICE R.SURESH KUMAR

T.C. (A) No.884 of 2016

M/s.Cadensworth (India) Ltd.,
Guindy House, 95, Mount Road,
Guindy, Chennai 600 032. ... Appellant/Appellant

-vs-

The Assistant Commissioner of Income Tax,
Company Circle-I(3), Chennai-34. ... Respondent/Respondent

Appeal filed against the order dated 18.03.2015 passed in ITA No.1369/Mds/2014 by the Income Tax Appellate Tribunal, 'C' Bench, Chennai against the order of commissioner of Income Tax (Appeals)-I, Chennai dated 24.03.2014 in ITA.No.381/2010-11/A-1 against the Assessment order dated 14.12.2010 made in PAN.No.AABCC9872E

For Appellant : Mr.Venkata Narayanan
for M/s.Subbaraya Aiyar
For Respondent : Mr.T.Ravi Kumar

J U D G M E N T

(Judgment of the Court was delivered by Rajiv Shakdher, J.)

Admit. With the consent of learned counsels appearing for the Revenue and the Assessee, the Tax Case (Appeal) is taken up for hearing.

2.This appeal is filed by the assessee against the judgment and order of the Income-tax Appellate Tribunal (in short 'the Tribunal') dated 18th March, 2015. In the appeal, the following questions of law have been framed by the assessee for consideration by this Court:

- 1.Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred towards temporary

structure on leased business premises is capital in nature and not allowable as revenue expenditure ?

2. Whether on the facts and circumstances of the case, the Tribunal was right in law in not considering and applying the ratio of various decisions of the High Court and Tribunal including those of jurisdictional High Court and coordinate benches of the Tribunal at Chennai cited before them ?

3. In order to adjudicate the questions of law framed, the following broad facts are required to be noticed.

3.1. The assessee, who is in the business of servicing of computers, computer peripherals and telecommunication products, in addition to the business of trading in telecommunication products, had filed its return for the Assessment Year (AY) 2008-2009, on 25.09.2008, whereby, it admitted an income of Rs.3,35,31,354/-.

3.2. The assessee's case was picked up for scrutiny and thereafter, assessment was completed under Section 143 (3) of the Income-tax Act, 1961 (in short 'the Act'), on 14.02.2010.

3.3. While framing the assessment, the Assessing Officer amongst other disallowances, disallowed excess expenditure claimed by way of depreciation on furniture and fittings and temporary structures like wooden partitions, false ceilings, etc., installed in the leased premises to the extent of Rs.90,72,126/-. In this behalf, the Assessing Officer, had relied upon the judgment of this Court in the matter of CIT vs. Indian Metal & Metallurgical Ltd., (1983) 141 ITR 40.

3.4. The assessee, on its part, had claimed the entire sum expended on furniture and fittings and temporary structures such as, wooden partitions, false ceilings, etc. as depreciation. The amount which the assessee had expended and claimed was a sum of Rs.1,18,33,613/-. As would be evident from what is stated hereinabove, the Assessing Officer treated the said amount expended as capital expenditure and, thereupon, went on to allow the depreciation at the rate of 10%, i.e. a sum of Rs.10,08,013/-. Resultantly, the excess sum amounting to Rs.90,72,126/- was disallowed.

3.5. The record also shows that in coming to this conclusion, the Assessing Officer, in addition to the judgment referred to above, also relied upon the following judgments:

- (i) New Shorrock Spinning & Manufacturing Co. Ltd. vs. CIT, (1956) 30 ITR 338;
(ii) CIT vs. Madras Auto Services Pvt. Ltd. (1998) 233 ITR 468 (SC).

3.6. Being aggrieved, the assessee carried the matter in appeal to the Commissioner of Income-tax (Appeals). The assessee did not meet with success. Consequently, the appeal was dismissed. The assessee carried the matter further by way of an appeal to the Tribunal, which met the same fate.

3.7. It is in these circumstances that the assessee has preferred the present appeal before us.

4. The Tribunal while dismissing the appeal, has made the following observations in the impugned order, which form the basis of the conclusion reached by it,

''6. We have heard both the parties and carefully perused the materials available on record and decisions cited by both the parties. It is apparent from the facts of the case that the assessee has incurred an expenditure of Rs.1,18,33,613/- towards refurbishing the leased out premises by incurring expenditure on wooden partitions, false ceiling, ESD tiled floorings, electrical network cabling and interior decoration etc. There is no doubt that the assessee would derive benefit from these structures year after year and therefore, the benefit derived is of enduring nature. From the lease deed of the assessee with its landlord, it is evident that the lease is for a period of nine years which can be further extended by mutual consultation (page 3 of the paper book). It is also evident that the asset leased out by the assessee is of commercial nature and intention of the landlord is to let out the premises on long term basis. Therefore, from the facts and circumstances of the case, it is evident that the assessee would derive benefit from these structures at least for a period of nine years or even more. These structures also remain as the property of the assessee and on vacating the premises, the assessee is entitled to either remove these structures, or sell it to the new tenant. As pointed out by the Ld. CIT (A), Explanation-1 to Section 32 clearly clarifies the issue, though it has been inserted in the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 with effect from 01.04.1988. The decision relied upon by the LD. A.R. in the case Thiru Arooran Sugars Ltd. vs. LD. CIT, the facts are not identical to the case of the assessee. In that case,

the issue before the Hon'ble Jurisdictional High Court was 'Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the repairs and renovation expenses incurred on the leased business premises as capital expenditure ?' In the present case before us, it is not the repair work that was carried on but creation of an asset itself by incurring an whopping expenditure of Rs.1,18,33,613/-. Considering the facts of the present case before us, and based on our above discussions, we do not find it necessary to interfere with the elaborate and speaking decision rendered by the Id. CIT (A). Accordingly, the issue is decided in favour of the Revenue. Needless to mention, that all the decisions cited by the Id. A.R., are distinguishable from the facts of the present case before us.

5. In support of this appeal, Mr. Venkata Narayanan, learned counsel, argued on behalf of the assessee, while the Revenue was represented by Mr. T. Ravikumar.

6. Learned counsel for the assessee submitted that the impugned order of the Tribunal failed to take into account the fact that in effect, the assessee had contended before the authorities below that the expenditure incurred was in the nature of revenue expenditure and had to be allowed as a matter of fact on principles analogous to Section 37 of the Act. De hors this submission, learned counsel for the assessee says that the authorities below which include the Tribunal have not inquired in detail, with regard to the nature of expenditure incurred under each sub-head. It is the submission of the learned counsel for the assessee that a major part of the expenses incurred would not result in the generation of an asset of an enduring nature as contended by the Revenue. It is, thus, the contention of the learned counsel for the assessee that, in this particular case, the provisions of Explanation-1 of Section 32 of the Act will have no application.

7. On the other hand, Mr. Ravi, who appears for the Revenue, took the Court through the terms of the lease deed executed between the assessee and his landlord. Mr. Ravi laid emphasis on the fact that the period of lease was nine (9) years and that it was renewable at the option of the assessee / lessee, albeit, on further terms and conditions which may be mutually agreed to between the parties. Learned counsel also adverted to various other clauses of the lease deed to emphasize the point that not only was the lessor / landlord required to hand over the demised premises to the assessee / lessee, after it was placed in good order, but also, had undertaken to bear all major expenses towards repairs. Learned counsel, in particular, drew our

attention to Clauses 2, 3, 5.4, 5.6, 5.8, 5.13, 6.6 and 8 of the lease deed dated 01.12.2006.

8. Besides the aforesaid, Mr. Ravi also relied upon the details of expenditure contained in the invoice submitted by an entity by the name of SRP Enviro Systems Pvt. Ltd (in short 'SRP'), Chennai. Based on the details given therein, it was sought to be contended by the learned counsel that the nature of expenses incurred is suggestive of the fact that a major part of the expense incurred was in the nature of capital expenditure.

8.1. Furthermore, in support of his submissions, the learned counsel sought to place reliance on the following judgments:

- (i) Balliamal Naval Kishore & Anr. vs. Commissioner of Income Tax, (1997) 224 ITR 414;
- (ii) Surinder Madan vs. Assistant Commissioner of Income Tax, (2014) 364 ITR 461 (Delhi).

9. We have heard the learned counsel for the parties and perused the record.

10. According to us, none of the authorities below have examined in detail the nature of the expenses. The authorities below have adverted to, broad heads while rendering their respective decisions in the matter. To give an example, the details submitted by SRP along with their invoice dated 01.06.2007 would show that there are expenses incurred, towards painting of walls, supply and fixing of coving cum capping, light fittings, etc.; which, to our minds, prima facie, appear to be in the nature of revenue expenditure.

11. The authorities below, as indicated hereinabove, have not examined, in our view, the expenditure incurred under each sub-head minutely so as to ascertain as to whether or not they would fall under the category of capital expenditure.

11.1. Besides this, there is case law to suggest that a difference would have to be drawn between the 'current repairs' and 'repairs', (See judgment in Commissioner of Income-tax vs. Hi Line Pens (P) Ltd., (2008) 306 ITR 182 and Commissioner of Income Tax vs. Amway India Enterprises, (2012) 346 ITR 341).

11.2. Furthermore, as correctly pointed out by the learned counsel for the assessee, a Division Bench of this Court in Thiru Arooran Sugars Ltd. vs. Deputy Commissioner of Income-Tax, (2013) 350 ITR 324 (Mad), has held that temporary structures such as false ceiling, could not be categorised as a capital expenditure.

11.3. As a matter of fact, in that particular case, deduction was claimed qua expenditure incurred on re-laying of damaged floors, painting and setting up partitions in a leased property.

11.4. Therefore, to our minds, the authorities below ought to have carefully examined each sub-head of the expenditure incurred by the assessee and then, come to the conclusion whether or not they ought to categorise the expense as capital expenditure, keeping in mind, the facts obtaining in the present case and the case law on the point.

12. We are, thus, of the view that for the foregoing reasons, the impugned order would have to be set aside with the direction to remit the matter to the Assessing Officer for a de novo assessment. It is ordered accordingly.

13. Having regard to the direction issued, the questions of law proposed by the assessee are left open, which, to our minds, can be answered only after an exercise is conducted by the Assessing Officer in the light of the observations made above by us.

14. Tax Case (Appeal) is, accordingly, disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sra
To

1. The Assistant Registrar,
Income Tax Appellate Tribunal
'C' Bench, Chennai.
2. The Commissioner of Income-tax
(Appeals)-I, Chennai.

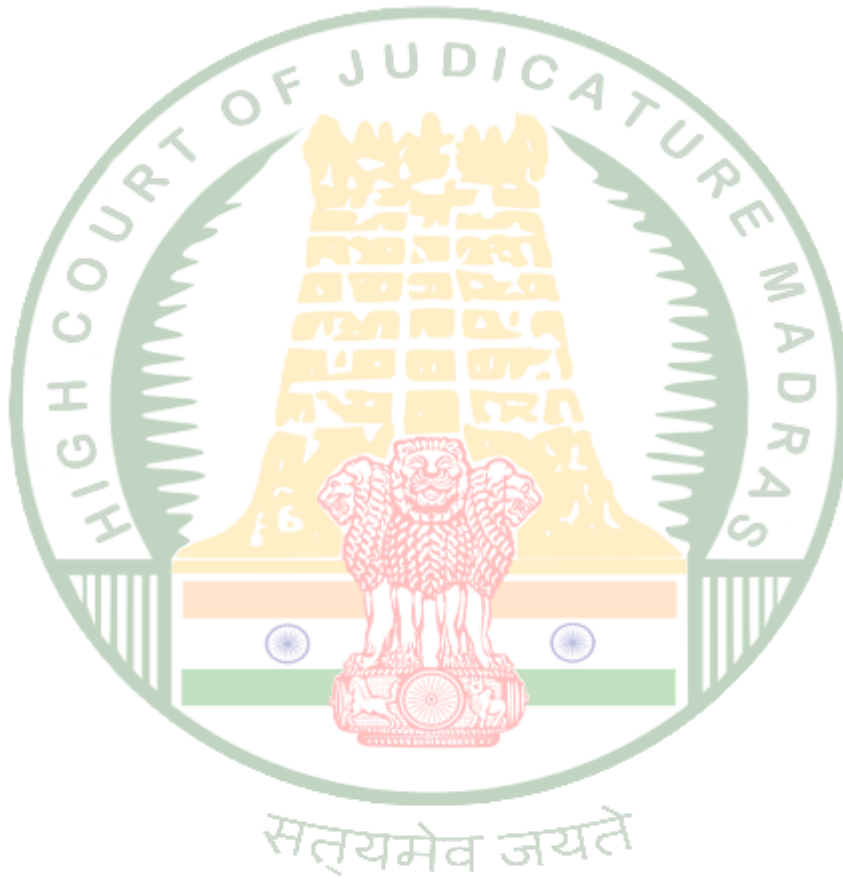
3.The Assistant Commissioner of Income Tax,
Company Circle-I(3), Chennai-34.

+1cc to Mr.T. Ravikumar, Advocate, S.R.No.14526

+1cc to Mr.Subbaraya aiyar P. Admanabhan, Advocate, S.R.No.14469

GJII(CO)
md(20/03/2017)

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